



DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

[Docket No. NRCS-2022-0008]

Determination of the Primary Purpose of Florida's Save Our Indian River Lagoon (SOIRL) Program

AGENCY: Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture (USDA).

ACTION: Notice.

SUMMARY: USDA is providing public notice that the Secretary of Agriculture has determined that cost share payments made by the Florida's SOIRL Program are primarily for the purpose of conserving soil and water resources or protecting and restoring the environment. NRCS was assigned technical and administrative responsibility for reviewing Florida's SOIRL Program and for making appropriate recommendations for the Secretary's determination of primary purpose. The Secretary's determination permits recipients of cost share payments to exclude such payments from gross income to the extent allowed by the Internal Revenue Service.

FOR FURTHER INFORMATION CONTACT: Ronnie Mauer; telephone: (202) 720-9733; or e-mail: Ronnie.Mauer@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

Under Section 126(a)(8) of the Internal Revenue Code, gross income does not include the "excludable portion" of payments received under any program of a State, or a political subdivision of a State, under which payments are made to individuals primarily for the purpose of protecting or restoring the environment. In general, a cost share payment for selected conservation practices is exempt from Federal taxation if it meets

three tests:

- (1) It was for a capital expense;
- (2) It does not substantially increase the operator's annual income from the property for which it is made; and
- (3) The Secretary of Agriculture certified that the payment was made primarily for conserving soil and water resources, protecting, or restoring the environment, improving forests, or providing habitat for wildlife.

The Secretary of Agriculture evaluates a conservation program on the basis of criteria specified in 7 CFR part 14 and makes a "primary purpose" determination for the payments made under the conservation program. The objective of the determination made under part 14 is to provide maximum conservation, environmental, forestry improvement, and wildlife benefits to the general public from the operation of applicable programs. Final determinations are made on the basis of program, category of practices, or individual practices.

NRCS was assigned technical and administrative responsibility for reviewing Florida's SOIRL Program and for making appropriate recommendations for the Secretary's determination of primary purpose.

Following a primary purpose determination by the Secretary of Agriculture, the Secretary of the Treasury determines if the payments made under the conservation program substantially increases the annual income derived from the property benefited by the payments.

Environmental Review

From this Federal action, approving tax deferral will not result in impacts to the environment, therefore, no further National Environmental Policy Act (NEPA) documentation will be prepared.

Determination

As provided for by section 126 of the Internal Revenue Code, the Secretary examined the authorizing legislation, regulations, and operating procedures regarding the Brevard County, Florida SOIRL Program. In accordance with the criteria specified in 7 CFR part 14, the Secretary has determined the primary purpose of cost share payments made under the Florida SOIRL Program is conserving soil and water resources or protecting and restoring the environment. The Indian River Lagoon is considered a public recreational facility pursuant to the Florida statutes, sections 163.3164(38), 163.3221(13), and 189.012(5).

In accordance with section 212.055(2), Florida statutes, pertaining to discretionary sales surtaxes for improvements to public facilities, the SOIRL Program Project Plan and the half cent sales surtax was adopted by the Brevard County Board of County Commissioners in Ordinance 2016-15, as amended by Ordinance 2016-24, and enacted by voter referendum on November 8, 2016, to restore water resources and estuarine wildlife habitats of the Indian River Lagoon. The sales surtax is collected and distributed pursuant to section 212.055, interlocal agreements with municipalities, and applicable State laws. All projects authorized by the SOIRL Program Project Plan are permitted, constructed, and implemented in accordance with State and Federal requirements, where applicable.

A “Record of Decision” for the Brevard County, Florida SOIRL Program to review claims regarding reimbursement to abandon septic and connect to sewer lines, upgrade existing septic systems to advanced septic systems, repair leaking sewer laterals, connect package plants to central sewer or upgrade the treatment level at private package plants has been prepared and is available upon request from the Acting Director, Financial Assistance Programs Division, Natural Resources Conservation, 1400 Independence Avenue, SW, Room 4529 South Building, Washington, DC 20250.

The Secretary's determination is in accordance with section 126 of the Internal Revenue Code of 1954, as amended (26 U.S.C. 126), and permits recipients of cost share payments to exclude those payments from gross income to the extent allowed by the Internal Revenue Service.

Louis Aspey,
Associate Chief,
Natural Resources Conservation Service.

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